

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re:

RMS TITANIC, INC., *et al.*,<sup>1</sup>

Case No. 3:16-bk-02230-PMG  
Chapter 11 (Jointly Administered)

Debtors.

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**SUPPLEMENT TO MOTION FOR ORDER PURSUANT TO  
BANKRUPTCY CODE SECTIONS 105 AND 363 AND BANKRUPTCY  
RULES 6003, 6004, AND 9014 AUTHORIZING THE DEBTORS TO  
MARKET AND SELL CERTAIN TITANIC ARTIFACTS FREE  
AND CLEAR OF LIENS, CLAIMS, AND INTERESTS**

RMS Titanic, Inc. and certain of its affiliates, as Debtors and Debtors in possession in the above-captioned case (collectively, the “Debtors”), previously moved this Court for an order pursuant to sections 105 and 363 of title 11 of the United States Code (11 U.S.C. § 101, *et seq.*, as amended the “Bankruptcy Code”) and Rule 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an order authorizing the Debtors to market and sell certain Titanic Artifacts free and clear of liens, claims, and interests (the “Motion to Sell Artifacts”). A hearing on the Motion to Sell Artifacts is scheduled for July 12, 2016 at 3:00pm. This pleading shall serve as a supplement to Debtor’s Motion to Sell Artifacts.

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<sup>1</sup> The Debtors in the chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number include: RMS Titanic, Inc. (3162); Premier Exhibitions, Inc. (4922); Premier Exhibitions Management, LLC (3101); Arts and Exhibitions International, LLC (3101); Premier Exhibitions International, LLC (5075); Premier Exhibitions NYC, Inc. (9246); Premier Merchandising, LLC (3867), and Dinosaurs Unearthed Corp. (7309). The Debtors’ service address is 3045 Kingston Court, Suite I, Peachtree Corners, Georgia 30071.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion under 28 U. S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue for this case and this Motion in this District are proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105 and 363 and Bankruptcy Rules 6003, 6004, and 9014.

### **BACKGROUND**

3. On June 14, 2016 (the “Petition Date”), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including its business operations, its capital and debt structure, and the events leading to the filing of this bankruptcy case, are set forth in detail in the Case Summary.

4. The Debtors continue to manage and operate their business as a debtor in possession under Bankruptcy Code sections 1107 and 1108.

5. No trustee or examiner has been appointed in this chapter 11 case, and no committee has yet been appointed.

### **RELIEF REQUESTED**

6. By this Motion, the Debtors request entry of an order authorizing the Debtors to market and sell, after notice and hearing, certain assets of the Debtors, specifically certain artifacts of the Titanic.

**SUPPLEMENTAL BACKGROUND**

7. On June 21, 2016, Debtors appeared before the United States District Court for the Eastern District of Virginia, Norfolk Division (the “Court”) to provide a status update on the Debtors’ business operations (the “Hearing”).

8. The Hearing was conducted pursuant to that court’s continuing personal jurisdiction over the Debtors as set forth in Covenants.<sup>2</sup> The Hearing was scheduled several weeks prior to Debtors’ Chapter 11 filing.

9. Prior to the commencement of the Hearing, the Debtors provided the Court with a courtesy copy of the Debtors’ Motion to Sell Artifacts.

10. At the Hearing, counsel for the Debtors provided the Court with a general update on the Debtors’ business operations, and their continued compliance with the Covenants. No testimonial or documentary evidence was offered by the Debtors. A complete copy of the transcript of the Hearing is attached hereto as Exhibit A.

11. At the Hearing, the Court noted that in their Motion, the Debtors only seek to sell French Artifacts, and not any American Artifacts.<sup>3</sup> Tr. at 11 (“My understanding [is] that it’s only the French artifacts that are involved in this sale.....”).

12. The Court acknowledged that the French Artifacts are not subject to the Covenants. Tr. at 22 (the Court: “As I understand it, at this juncture Mr. McFarland can just clarify for the Court on the record that the only artifacts that are looking to be liquidated are those which have been referred to as the French artifacts *which are not*

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<sup>2</sup> The term “Covenants” is defined at page 6 of the Motion to Sell Artifacts.

<sup>3</sup> The terms “French Artifacts” and “American Artifacts” are defined at pages 3 and 4 of the Motion to Sell Artifacts.

*subject to the covenants and conditions?*” Debtor’s Counsel: “That is correct Your Honor.” (emphasis added)).

13. In fact, the Court noted that the French Artifacts were “excepted” from the Covenants, which apply only to the American Artifacts. Tr. at 11 (the French Artifacts “were excepted in the covenants and conditions that protected the artifacts that were before this Court”).

14. The Court expressed no admonition or objection to Debtors regarding a sale of the French Artifacts.

15. The Court did caution the Debtors to, “go back and read the covenants and conditions that govern the Titanic artifacts [that are] *before this court.*” (emphasis added). Tr. at 12.

16. In that respect, the Court stated that as they relate to the American Artifacts, the Orders from the Titanic salvage proceedings take precedence over bankruptcy rulings from this Court. Tr. at 11-12.

17. The Court also stated that under Section VII of the Covenants, the American Artifacts, but not the French Artifacts, are carved out from the Debtors’ estate in Chapter 11. Tr. at 11-12 (“the covenants and conditions specifically exclude the Titanic artifacts -I’m not talking about the French artifact collection -- from the bankruptcy estate of the trustee, and that’s your covenant and conditions Section 7(d)”).

18. The Court further stated that the automatic stay set forth in Bankruptcy Code section 362 does not apply to the proceedings in this court. Tr. at 5 and 18-20.

19. The Court directed the Debtors to continue to file Periodic Reports with the Eastern District of Virginia every sixty days, to commence on July 15, 2016. Tr. at 24.

20. The Debtors contend that the statements made by the Court with respect to the French Artifacts accurately reflect the law of the case, as determined by the United States Fourth Circuit Court of Appeals in 2006, in its ruling that the Eastern District of Virginia “does not have in rem jurisdiction over the French artifacts, or, absent in rem jurisdiction, any other jurisdictional basis” upon which to exert control over the French artifacts. *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel*, 435 F.3d 521, 528 (4th Cir. 2006).

21. In keeping with the Court’s recognition of the status of the French Artifacts, the Debtors do not at this time seek enforcement of the automatic stay pursuant to Bankruptcy Code section 362, with respect to the proceedings in the Eastern District of Virginia.<sup>4</sup>

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<sup>4</sup> At this juncture, whether the automatic stay provisions of bankruptcy code section 362 apply to the Eastern District of Virginia proceedings need not be officially determined. In the Hearing, the Court stated that the automatic stay does not apply to the Eastern District of Virginia proceedings because the Debtors themselves commenced that in rem salvage action many years ago, such that they are therefore not defendants in that action. The Court stated the automatic stay only “protects debtors who are or could be defendants in actions.” Tr. at 19. In support of its statement, the Court cited several cases, holding, “the automatic stay does not apply to actions originally commenced by the bankrupt party.” See e.g., Overnite Transp. Co. v. Ryder/P-I-E Nationwide, Inc., No. 86-1060C(6), 1992 U.S. Dist. LEXIS 2385 (E.D. Mo. Mar. 2, 1992). These cases present an accurate analysis of Bankruptcy Code section 362(a)(1) (stay of actions “proceeding against the debtor”), but do not appear to apply to stays under section 362(a)(3) (stay of actions seeking “to exercise control over property of the estate”). Section 362(a)(3) often serves to stay proceedings where the requirements of 362(a)(1) are not met. See e.g., In re Bridge, 90 B.R. 839, 840 (Bankr. E.D. Mich. 1988) (holding forfeiture deemed act “to exercise control over property of the estate” and not proceeding “against the debtor,” and hence subject to § 362(a)(3) and not subject to § 362(a)(1)). Insofar as the fundamental purpose of the Eastern District of Virginia proceeding is to exercise continuing control over the artifacts, section 362(a)(3) appears to stay those proceedings. Nevertheless, because the Motion to Sell Artifacts relates only to a proposed sale of the French Artifacts, and the Court did not seek to enjoin such a sale or otherwise dictate its terms, Debtors respectfully submit the issue of enforcing the

**CONCLUSION**

Wherefore, the Debtors respectfully request that the Court enter an order granting the relief requested in the Motion to Sell Artifacts and such other further relief as may be just and proper.

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Possession*

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automatic stay with respect to the Eastern District of Virginia proceedings need not be determined by this Court at this time.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF on July 7, 2016. I also certify that the foregoing document is being served this day on the following counsel of record via transmission of Electronic Filing generated by CM/ECF:

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